REMARKS

New claims 14-19 are pending in this Application. Original claims 1-13 have been cancelled without prejudice. New claim 14 is an independent claim, and new claims 13-19 depend, or ultimately depend on new independent claim 14. Claims 14-17 correspond to original claims 1-4 respectively, and new claims 18-19 correspond to original claims 7-8 respectively. No new matter is added.

Applicants have not presented new claims 14-19 in order to overcome the Examiner's enablement, indefiniteness, statutory subject matter or prior art rejections. Rather, Applicants have added new claims 14-19 in favor of the original claims simply to better describe and cover the inventions recited in the original claims. No surrender of scope is intended by presentation of the new claims and no surrender of equivalents with respect to any element or limitation in new claims 14-19 is contemplated or intended by presenting the new claims.

Claim Objections

Original claim 4 is no longer pending in this Application, thereby obviating the need to correct the typographical error in dependency.

Claim Rejections – 35 U.S.C. § 112 ¶1 - Enablement

The Examiner rejected original claims 1-13 as allegedly failing to comply with the enablement requirement in 35 U.S.C. § 112. While Applicants disagree with the Examiner's assertion that the original claims contain subject matter which is not described in the specification in such a way as to enable one skilled in the art to which they pertain to make and use the inventions defined therein, Applicants believe that the specification fully enabled the original claims, Applicants need not address the Examiner's assertion on the merits in view of the new claims pending in this Application. Applicants' specification provides far more disclosure than is necessary to enable one of ordinary skill in the art to which new claims 14-19 pertain to make and use the inventions defined by those claims. By way of example, Applicants direct the Examiner's attention to Figs. 1 and 2, paragraphs 0008 through 0014 of the Detailed Description of the Preferred Embodiments, and the 16 pages of pseudocode comprising Appendices A through G containing specific embodiments of subject matter covered by some or all of the claims and described in paragraphs 0012 through 0014 of the Detailed Description.

Applicants respectfully submit that in view of this significant disclosure, one having ordinary skill in the art would in no way have to engage in undue experimentation in order to make and use the inventions set forth in the claims. The Examiner cannot credibly contend that one having ordinary skill in the art to which the claims pertain – network management and managed element maintenance operations – would not be able to compile an operational version of the executable computer code recited in Applicant's claims, particularly in view of the extensive pseudocode provided by the Applicants. Nor is it Applicants' burden, in the first instance, to present evidence of a high level of skill in the art at the time this Application was filed, or to present evidence that all of the methods needed to practice the claims were well known (see Office Action at page 3). The Examiner has the burden in the first instance "of giving reasons, supported by the record as a whole, why the specification is not enabling, and showing that the disclosure entails undue experimentation would be one way of meeting that burden." *In re Morehouse*, 545 F.2d 162, 165 (C.C.P.A. 1976). As in *Morehouse*, the Examiner's unsupported assertions in this case are entirely insufficient to carry this burden. *Id.* ("Not one cogent reason, however, has been presented to support this notion [that the applicant's specification is non-enabling]. Accordingly, the PTO has not carried its burden, and we will not sustain the rejection").

Claim Rejections – 35 U.S.C. §112 ¶2 - Indefiniteness

The Examiner rejected original claims 1-13 as allegedly omitting essential steps. Applicants respectfully submit that the Examiner mistakenly believed Applicants' original claims recited a method when they did not. Applicants' original claims were intended and believed to recite executable computer code. Applicants' new claims unmistakably recite executable computer code.

Claim Rejections – 35 U.S.C. § 101

Applicants' remarks in connection with the alleged indefiniteness rejection immediately above address this rejection.

Claim Rejections – 35 U.S.C. § 103

The Examiner has asserted that original claims 1-13 are unpatentable over Qiao (U.S. Pat. No. 6,721,791) in view of Groath et al. (U.S. Patent No. 6,571,285). With respect to original independent claims 1 and 7 in particular, the Examiner has asserted that Qiao "substantially discloses the features of the invention as described the Claims." Applicants respectfully disagree.

While the disclosure in Qiao is anything but a model of clarity, Qiao appears to be a somewhat less than optimal translation of the Japanese application upon which priority was claimed, it is clear that the systems and methods disclosed in Qiao bear no relationship whatsoever to the subject matter in Applicants' original and new claims. The Examiner has cited Column 4, lines 55-65 and Column 5, lines 5-30 in support of the obviousness assertion quoted above. However, a close reading irrefutably shows that the cited portions of Qiao, as well as the rest of the disclosure, do not address the expunging from storage of messages relating to faults that have occurred in a network as set forth in Applicants' claims. Rather, the systems and methods disclosed in Qiao address ways of keeping track of *elements in a network* to be managed and monitored themselves and the individual *elements' current network addresses. See, e.g.,* Col. 3, lines 10-15, 38-51. One of the problems Qiao sought to address was the record-keeping difficulties associated with frequent changes in network addresses of elements because there is a trend towards larger and larger networks having more and more elements to be managed and monitored. *See, e.g.,* Col. 2, lines 47-53. In this regard, Qiao appears to use the term "trap" to refer to a communication identifying an element in a network to be managed and its corresponding network address at that moment in time. *See, e.g.,* Col. 4, lines 58-63 and Col. 5, lines 5-8 ("In this system, the manager comprises a trap entry demand processing unit issuing to the representative agent a trap entry demand which contains an address of an agent to be monitored, a self-address and trap effective time, for entry as an object of trap; ... a trap entry processing unit which upon receipt of trap entry demand from the manager, enters an address as an object of trap and effective time into a database"). This is somewhat different than how Applicants used the term "trap" to describe preferred embodiments of the inventions in their specification. *See, e.g.,* paragraph 009 ("whenever a switch or managed network element ... experiences a fault it generates a trap. The trap is subsequently communicated ... to at least one of the fault

servers. ... The fault server 102 converts the trap into an English language-type message []
that typically includes information such as the type of error experienced by the network
element, a date and time the error occurred ..."). While both uses may be appropriate and
Applicants are not disclaiming any meanings of "trap," Applicants only wish to point out
how Qiao is using the term to avoid confusion and demonstrate that Qiao is not addressing
the same subject matter as Applicants' claims.

It is true that part of the way in which Qiao keeps track of the elements to be managed
and their corresponding network addresses is to provide for a way to delete any particular
element's entry from a database (i.e., delete any particular "trap" or "object of trap" in Qiao's
terminology) upon receipt of command to do so (see, e.g., Fig. 10 ("release command" from
"Manager 12-1", "delete trap from DB S27" by "Agent 10", "issue release success S28"
notice by "Agent 10", followed by "cancel trap monitor mode S111" by "Manager 12-1"),
but this has nothing to do with the subject matter of Applicants' claims. Applicants' claims
explicitly address expunging *messages relating to faults that have occurred in a network* by
controlling the rate at which such messages are deleted from a database based in part on the
rate at which messages relating to faults are added to the database, not a way of keeping track
of the elements in a network to be managed and monitored by controlling how, where and/or
when information identifying the current network elements to be managed is added to and
deleted from a list of current network elements to be managed. Applicants also note that
Qiao fails to mention the term "rowcount" at all, says nothing about the number of faults
generated per unit time in a network, and fails to address adjusting rowcounts or the number
of entries or messages in a database deleted over time based on the number of entries being
added per unit of time.

For at least these reasons the Examiner's rejection of the original claims cannot stand
and Applicants' new claims are clearly patentable over Qiao. Because the claims are
patentable over Qiao, Applicants do not address the Examiner's assertions with respect to
Groath or the combination of Qiao and Groath. Applicants do note, however, that by not
addressing any of the Examiner's other assertions regarding Qiao, Groath and/or any other
matter, Applicants are in no way acquiescing or admitting that such assertions are correct or
have any merit. *See, e.g, 3M Innovative Properties Co. v. Avery Dennison Corp.*, 350 F.3d
1365, 1373-74 (Fed. Cir. 2003).

Conclusion

For at least the reasons stated above, all of the Applicants' pending claims define patentable subject matter are in condition for allowance.

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